

<sup>1</sup> For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

## **FACTUAL HISTORY**

On March 4, 2006 appellant, a 47-year-old modified letter carrier, injured her left shoulder, left arm and the left side of her neck when her mail truck was struck from behind by another vehicle. She filed a claim for benefits, which the Office accepted for neck sprain/strain.

On August 11, 2006 appellant filed a claim for a schedule award based on additional impairment of her left and right upper extremities.

By letter dated August 24, 2006, the Office asked Dr. Damien B. Sanderlin, a specialist in family practice, to schedule an appointment with appellant to determine whether she had any permanent impairment of her upper extremities from her accepted upper back and neck conditions.<sup>2</sup> Dr. Sanderlin did not respond to this letter.

In an August 25, 2006 report, Dr. Ihsan Shanti, a specialist in pain management, found that appellant had a 20 percent impairment of the left shoulder and a 10 percent impairment of the cervical spine pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001). He rated impairment based on loss of range of motion in the upper extremities six percent impairment for loss of left shoulder flexion; and four percent for loss of left shoulder extension under Figure 16-40 at page 476; a seven percent impairment for loss of left shoulder adduction under Figure 16-43 at page 477; and a one percent impairment for loss of left shoulder external rotation and a two percent impairment for loss of left shoulder internal rotation under Figure 16-46 at page 479. Dr. Shanti added the range of loss impairment to 20 percent.

With regard to the cervical spine, Dr. Shanti measured a 2 percent impairment for abnormal flexion and a 2 percent impairment for loss of extension under page 418 at Table 15-12 of the A.M.A., *Guides*; a 1 percent impairment for left lateral bending/flexion and a 1 percent impairment for right lateral bending/flexion under Table 15-13 at page 420 of the A.M.A., *Guides*; a 2 percent impairment for left-sided abnormal motion and ankylosis/rotation and a 2 percent impairment for right-sided abnormal motion and ankylosis/rotation under Table 15-14 at page 421 of the A.M.A., *Guides*, for a total 10 percent impairment of the cervical region.<sup>3</sup>

In a September 7, 2006 report, Dr. Douglas R. Sharp, an osteopath and a specialist in pain management, found on examination that appellant's cervical range of motion was within normal limits.

On January 11, 2007 an Office medical adviser noted that Dr. Shanti's impairment rating based on loss of range of motion to appellant's neck and left shoulder was not consistent with Dr. Sharp's September 7, 2008 finding that she had normal cervical range of motion. He stated that this inconsistency required further development of the medical evidence.

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<sup>2</sup> The Office previously accepted two other claims filed by appellant, File Nos. xxxxxx740 and xxxxxx552; the records pertaining to these claims are not contained in the instant case file. It accepted a right wrist sprain and granted a six percent schedule award for the right upper extremity. The Office also accepted left shoulder myositis granted a schedule award for a 12 percent impairment of the left upper extremity.

<sup>3</sup> The Board notes that Dr. Shanti rated impairments for both the right and left upper extremities.

The Office referred appellant to Dr. Michael D. LeCompte, an osteopath and orthopedic surgeon, for a second opinion examination. In a February 23, 2007 report, Dr. LeCompte advised that she did not have any ratable impairment to arms under the A.M.A., *Guides*. He noted that, because appellant received an impairment rating for an injury which predated the March 4, 2006 employment injury, it would be illogical to reassess the same impairment. With regard to whether appellant had any additional impairment of the upper extremities stemming from a loss of range of motion, Dr. LeCompte was unable to rate any impairment due to her poor effort and lack of cooperation with his examination. He stated that when he asked her to perform cervical range of motion she essentially used her extraocular muscles to look up and down and was markedly restricted in side bending and rotation; this constituted a voluntary restriction on her part which yielded an invalid cervical range of motion measurement. Appellant also put forth a submaximum effort when he asked her to perform range of motion tests of the left shoulder. Dr. LeCompte stated that it was impossible to rate impairment to the left shoulder due to her poor effort. He concluded that appellant had no permanent impairment of her left or right upper extremity due to her accepted conditions.

In a March 9, 2007 report, an Office medical adviser found that appellant had no ratable impairment of the left upper extremity based on Dr. LeCompte's February 23, 2007 report. He noted that Dr. LeCompte evaluated appellant and reported no physical findings involving the left upper extremity that would support the presence of impairment. The Office medical adviser noted that appellant exerted a submaximal effort during range of motion testing of the neck and left shoulder which would invalidate any impairment measurements.

In a decision dated March 20, 2007, the Office denied appellant's claim for an additional schedule award.

On April 11, 2007 appellant requested a review of the written record contending that she was entitled to an additional schedule award based on Dr. Shanti's 20 percent left shoulder impairment rating and 10 percent cervical impairment rating. She stated that her March 4, 2006 work injury caused injury to her cervical region and aggravated her previous left shoulder injury. Appellant asserted that Dr. LeCompte incorrectly found that she failed to cooperate with his instructions during examination.

In a report dated December 19, 2006, Dr. Sanderlin advised that he was treating appellant for her work-related injury. He noted that she was able to wear a seatbelt. Dr. Sanderlin submitted treatment notes dated November 13, 2006 to April 2, 2008.

Appellant also submitted an unsigned December 6, 2002 report, which noted that she had an 11 percent left upper extremity impairment and a 7 percent whole person impairment based on her left shoulder under the A.M.A., *Guides*, due to an October 7, 1999 employment injury. The report was not signed by a physician.

By decision dated August 14, 2007, an Office hearing representative affirmed the March 20, 2007 decision.

By letter dated February 28, 2008, appellant requested reconsideration.

By decision dated September 15, 2008, the Office affirmed the March 20, 2007 decision.

By letter dated January 3, 2009, appellant requested reconsideration. She submitted a September 29, 2008 return to work offer from the employing establishment. Appellant also resubmitted a March 4, 2006 form report and the July 13, 2006 report of Dr. Sanderlin. She did not submit any new, additional medical evidence.

By decision dated March 30, 2009, the Office denied appellant's application for review on the grounds that it did not raise any substantive legal questions or included new or relevant evidence.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>5</sup> However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* fifth edition as the standard to be used for evaluating schedule losses.<sup>6</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>7</sup>

### **ANALYSIS**

The Board finds that the case is not in posture for decision.

The Office accepted appellant's claim for a neck strain/sprain on March 4, 2006. Appellant filed a claim for a schedule award based on permanent impairment of her upper extremities. The Office previously granted schedule award for 6 percent loss of the right upper extremity and a 12 percent impairment of the left upper extremity. In an August 25, 2006 report, Dr. Shanti rated 20 percent impairment to the left shoulder and a 10 percent impairment of the cervical spine based on loss of range of motion. The Office referred appellant for a second opinion impairment evaluation with Dr. LeCompte, who examined her and found no basis for a ratable impairment. Dr. LeCompte advised the Office of her poor effort and refusal to cooperate with his evaluation. He was unable to obtain reliable measurements range of motion in the left shoulder and the cervical region. The Board finds that a conflict exists in medical opinion between Dr. Shanti and

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<sup>4</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>5</sup> *Id.* at § 8107(c)(19).

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

Dr. LeCompte concerning the extent of any additional permanent impairment to either upper extremity due to her work-related neck injury.<sup>8</sup>

The Board will remand the case for referral of appellant for an appropriate impairment medical examination on whether she has additional impairment of the upper extremities. After such further development as it deems necessary, the Office shall issue a *de novo* decision.<sup>9</sup>

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2008 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: August 23, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> The Board finds that appellant is not entitled to a schedule award for the cervical region. Dr. Shanti's opinion that she had an upper extremity impairment based on loss of range of motion conflicted with the September 7, 2006 finding of Dr. Sharp, another attending physician, that she did not demonstrate any cervical loss of range of motion on examination.

<sup>9</sup> As the Board has set aside and remanded the September 15, 2008 schedule award decision, the Office's March 30, 2009 nonmerit decision is moot.